



SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

[Docket No. SSA-2010-0029]

RIN 0960-AH22

Regulations Regarding Income-Related Monthly Adjustment Amounts to Medicare Beneficiaries' Prescription Drug Coverage Premiums

AGENCY: Social Security Administration.

ACTION: Final Rule.

SUMMARY: This final rule adopts, without change, the interim final rule with request for comments we published in the Federal Register on December 7, 2010, at 75 FR 75884. The interim final rule contained the rules that we apply to determine the income-related monthly adjustment amount for Medicare prescription drug coverage (also known as Medicare Part D) premiums. This new subpart implemented changes made to the Social Security Act (Act) by the Affordable Care Act. The interim final rules allowed us to implement the provisions of the Affordable Care Act related to the income-related monthly adjustment amount for Medicare prescription drug coverage premiums when they went into effect on January 1, 2011.

DATES: The interim final rule with request for comments published on December 7, 2010 (75 FR 75884) is confirmed as final effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Craig Streett, Office of Income Security Programs, Social Security Administration, 2-R-24 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-9793. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

As we discussed in the interim final rule, in March 2010 Congress passed the Affordable Care Act, which established an income-related adjustment to Medicare prescription drug coverage premiums.<sup>1</sup> The interim final rule added a new subpart C, Income-Related Monthly Adjustments to Medicare Prescription Drug Coverage Premiums, to part 418 of our rules. Subpart C contains the rules that we use to determine when you will be required to pay an income-related monthly adjustment amount in addition to your Medicare prescription drug coverage monthly premium.

The interim final rule also amended our rules on the Medicare Part B (supplementary medical insurance) income-related monthly adjustment amounts to add section 418.1322. This section explains that if we make an income-related monthly

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<sup>1</sup> P.L. 111-148 §3308(a).

adjustment amount determination for you for the effective year for purposes of the Medicare prescription drug coverage program, we will apply the same income-related monthly adjustment amount determination to your Medicare Part B premium for the same effective year.

## Public Comments

On December 7, 2010, we published an interim final rule with request for comments in the Federal Register at 75 FR 75884 and provided a 60-day comment period. We received one comment from a member of the public, comments from one organization, and joint comments from four other organizations. We carefully considered the concerns expressed in these comments, but did not make any changes to the interim final rule. We have summarized the commenters' views and have responded to the significant comments that are within the scope of the interim final rule.

Comment: One commenter stated that the reasoning behind charging higher Medicare premiums is flawed because citizens who have contributed more to the system should have access to the same products and benefits at the same rate as other citizens. The commenter considered the income-related monthly adjustment to be a tax that could only be established by amending the tax code and suggested that a better alternative would be to reduce Medicare premiums and apportion the costs for primary coverage among the multiple health insurance policies that he believes most beneficiaries have.

Response: We have not adopted this comment because the reduction of Federal premium subsidies was legislated by Congress, and our regulations must conform to the provisions of the law.

Comment: One organization suggested that we provide notices to beneficiaries affected by the income-related monthly adjustment as early as possible, for example, by October 31 for premium adjustments beginning the following January. The commenter stated that early notice would give enrollees time to adjust their finances, raise any disagreements with income determinations, and reduce the number of retroactive adjustments that are required.

Response: We did not adopt this comment. The Internal Revenue Service provides us with modified adjusted gross income data no later than October 15 of each year, as required by law.<sup>2</sup> We must then process the data, verify our data processing, print, and mail the notices. For this reason, we cannot provide notice to beneficiaries regarding the income-related monthly adjustment amount as early as October 31. We do strive to mail the notices promptly and believe that delivery before December provides sufficient time for beneficiaries to make suitable preparations.

These notices contain information about beneficiaries' appeal rights and notify the beneficiaries that they have 60 days to file an appeal when they disagree with the determination. Our notices also inform the beneficiaries of their right to request a new

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<sup>2</sup> 42 U.S.C. 1395w-113(a)(7)(E)(ii).

initial determination.

Comment: Another comment encouraged us to develop materials to explain what beneficiaries who pay an income-related monthly adjustment can do if they experience a major life-changing event and a significant reduction in income, but have not yet filed a tax return reflecting that change.

Response: We already provide information to beneficiaries concerning the issues the commenter raised. When we send a letter telling a beneficiary that he or she must pay an income-related monthly adjustment, we include comprehensive information about what the beneficiary can do if he or she experiences a major life-changing event with a significant reduction in income. We also make available at our offices and on our web site, publications with information explaining this issue.<sup>3</sup> The Centers for Medicare & Medicaid Services (CMS) also provides information on this subject on its Medicare web site, [www.medicare.gov](http://www.medicare.gov).

Comment: A comment submitted jointly by four organizations proposed a change in regulations to clarify that a beneficiary's appeal of the imposition of an income-related monthly adjustment on Medicare Part B would automatically apply to an income-related monthly adjustment imposed on Medicare prescription drug coverage, and vice versa. In addition, the organizations suggested that if a beneficiary appeals either a Medicare Part B or Medicare prescription drug coverage income-related monthly adjustment initial

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<sup>3</sup> See, e.g., Medicare Premiums: Rules for Higher-Income Beneficiaries. Available at: <http://www.socialsecurity.gov/pubs/10536.pdf>.

determination, we should suspend determinations for both parts until the appeals process is complete and there is a final determination. The commenters proposed that joining the appeals and determinations resulting from those appeals would be beneficial in saving time and paperwork.

Response: We agree that 20 CFR 418.1322 and 418.2322 ensure that we apply any income-related monthly adjustment decision made in one program to the other. Under these provisions, if we make a new decision or change a decision on appeal for one program, we will also apply the decision to the other program.

Thus, if a beneficiary has both Medicare Part B and Medicare prescription drug coverage, any changes to an income-related monthly adjustment determination made on appeal will affect both programs and separate appeals are not necessary. In the current income-related monthly adjustment appeal process, we do not suspend the collection of the income-related monthly adjustment while the beneficiary appeals the determination. We make every effort possible to adjudicate the appeal quickly and implement the decision immediately thereafter. If an appeal decision results in an overpayment of premiums, we process refunds without additional action by the beneficiary.

Comment: Another commenter proposed a change in regulations to allow a request for a new initial determination when a beneficiary believes that CMS has provided incorrect Medicare prescription drug coverage information. The commenter stated that beneficiaries not enrolled in a Medicare prescription drug coverage plan are entitled to a

workable Social Security Administration (SSA) process to establish that an income-related monthly adjustment does not apply. In addition, the commenter suggested that regulatory language include a requirement that Medicare prescription drug plan sponsors, CMS, and SSA exchange updated enrollment information frequently to decrease the probability that beneficiaries are charged an income-related monthly adjustment inappropriately.

Response: We are not involved in the Medicare prescription drug coverage enrollment process and we cannot determine the absence of coverage without CMS input.

Additionally, adding a process to allow a beneficiary to establish the absence of Medicare prescription drug coverage could negatively affect beneficiaries who merely change plans or re-enroll shortly thereafter. The income-related monthly adjustment could be removed and result in the beneficiary owing a lump sum payment when the new plan information is received. CMS provides us with information about participation in Medicare-approved prescription drug coverage, and we refund any incorrectly billed income-related monthly adjustment for prescription drug coverage money as soon as possible.

Comment: The four organizations also suggested that we include the language of the subpart B regulations in the subpart C regulations rather than incorporating the text by cross-references.

Response: We have not adopted the comment. We believe that stating the language one time promotes administrative simplicity. We use cross-references in our regulations in

other instances, and we are confident that they do not confuse the reader or make it more difficult to use our regulations. Guidelines issued by the Office of the Federal Register authorize agencies to use cross-references in their rules in appropriate situations, and we believe that the situations in which we have used cross-references in these rules are necessary and appropriate. Moreover, adding the subpart B text to our subpart C rules would make the subpart C regulations more complicated and more difficult to use.

#### Regulatory Procedures

##### Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

##### Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.



Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 93.770 Medicare Prescription Drug Coverage; 93.774 Medicare Supplementary Medical Insurance; 96.002 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

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Michael J. Astrue,  
Commissioner of Social Security.

Accordingly, the interim final rule amending 20 CFR chapter III, part 418, subpart B and adding subpart C that was published at 75 FR 75884 on December 7, 2010, is adopted as a final rule without change.

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